

TITLE 68
TRUSTS AND FIDUCIARIES

CHAPTER 14
COURT APPROVED PAYMENTS OR AWARDS TO MINORS OR INCOMPETENT PERSONS

68-1401. APPLICATION. The provisions of this chapter apply when:

(1) A court approves a compromise of a judgment on a disputed claim of a minor or incompetent person, the execution of a release of a claim or covenant not to enforce a judgment on a claim of a minor or incompetent person, a compromise of a pending action or proceeding to which a minor or incompetent person is a party, or when a court awards judgment for a minor or incompetent person; and

(2) The compromise, release, covenant or judgment provides for the payment or delivery of money or property for the benefit of the minor or incompetent person.

[68-1401, added 1995, ch. 214, sec. 1, p. 743.]

68-1402. ORDER DIRECTING PAYMENT OF EXPENSES, COSTS AND FEES. (1) As part of the order approving a compromise, release, covenant or judgment pursuant to this chapter, the court shall also order that the reasonable and necessary expenses of the minor or incompetent person including, but not limited to, medical expenses, reimbursement to a parent, guardian, or conservator, and attorney's fees and costs approved by the court, shall be paid from the money or property to be paid or delivered for the benefit of the minor or incompetent person.

(2) The order for payment of expenses may be directed to the following:

(a) A parent or guardian of a minor or incompetent person or a guardianship or conservatorship of the estate of a minor or incompetent person; or

(b) The payor of money or property pursuant to the compromise, covenant, or judgment for the benefit of the minor or incompetent person.

[68-1402, added 1995, ch. 214, sec. 1, p. 743.]

68-1403. DISPOSITION OF BALANCE. (1) If there is no guardianship or conservatorship of the estate of the minor or incompetent person, the balance of the money or property, after payment of all expenses approved by the court pursuant to this chapter, shall be paid, delivered or deposited in the manner the court determines in its discretion is in the best interest of the minor or incompetent person, including the creation of a special needs trust.

(2) Except as provided in this section, if there is a guardianship or conservatorship of the estate of the minor or incompetent person, the balance of the money or property remaining after payment of expenses approved by the court pursuant to this chapter shall be paid or delivered to the guardian or conservator of the estate.

(3) Upon an ex parte petition filed by the guardian, conservator or any person interested in the guardianship or conservatorship estate, the court making an order or awarding judgment pursuant to this chapter may for good cause shown, order either or both of the following:

(a) That, after payment of expenses, all or part of the balance of money or property shall not become part of the guardianship or conservatorship estate and instead shall be deposited in an insured account in a financial institution in Idaho, or in a single premium deferred annuity, subject to withdrawal only when authorized by the court.

(b) If there exists a guardianship of the estate of the minor, the court may order that, after payment of expenses, all or part of the balance of money or property not become part of the guardianship estate and instead be transferred to a custodian for the benefit of the minor under the Idaho uniform transfers to minors act, [chapter 8, title 68](#), Idaho Code.

(4) Upon a petition by the guardian, conservator, or any person interested in the guardianship or conservatorship estate, the court making an order or awarding judgment pursuant to this chapter may order that, after payment of expenses, all or part of the balance of money or property not become part of the guardianship or conservatorship estate and instead be paid to a special needs trust.

(5) Notice of the time and place of hearing on a petition filed pursuant to this section, and a copy of the petition, shall be mailed to the director of the Idaho department of health and welfare at least fifteen (15) days before the hearing.

[68-1403, added 1995, ch. 214, sec. 1, p. 743.]

68-1404. INCOMPETENT PERSONS. References in this chapter to "incompetent person," shall be deemed to include persons for whom a conservator may be appointed pursuant to section [15-5-401](#), Idaho Code.

[68-1404, added 1995, ch. 214, sec. 1, p. 744.]

68-1405. SPECIAL NEEDS TRUSTS -- REQUIREMENTS -- JURISDICTION OF COURT -- COURT ORDERS. (1) If a court orders that money of a minor or incompetent person be paid to a special needs trust, the terms of the trust shall be reviewed and approved by the court and shall satisfy the requirements of this section. The trust shall be subject to the continuing jurisdiction of the court, and is subject to court supervision to the extent determined by the court. The court may transfer jurisdiction to the court in the county where the minor or incompetent person resides.

(2) A special needs trust may be established and continued under this section only if the court determines all of the following:

(a) That the minor or incompetent person has a disability that substantially impairs the individual's ability to provide for the individual's own care or custody;

(b) That the minor or incompetent person is likely to have special needs that will not be met without the trust; and

(c) That money to be paid to the trust does not exceed the amount that appears reasonably necessary to meet the special needs of the minor or incompetent person.

(3) If at any time it appears that:

(a) Any of the requirements of this section are not satisfied or the trustee refuses without good cause to make payments from the trust for the special needs of the beneficiary; and

(b) That the Idaho department of health and welfare or a county or city in this state has a claim against trust property, then the Idaho depart-

ment of health and welfare, the county or the city may petition the court for an order terminating the trust.

(4) A court order for payment of money or property to a special needs trust shall include a provision that all statutory liens properly perfected at the time of the court's order, and in favor of the Idaho department of health and welfare or any county or city of this state, shall be satisfied first.

[68-1405, added 1995, ch. 214, sec. 1, p. 744; am. 2010, ch. 235, sec. 68, p. 603.]